IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 4042 of 2006()

AGAINST THE JUDGEMENT/ORDER IN BA.6402/2006 DATED07/11/2006

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PETITIONER:

CHERIYAN @ BABU, S/O. CHERIAN,
PANICKER PARAMBIL HOUSE, IDINJILLAM MURI,
KAVUMBHAGOM VILLAGE, THIRUVALLA TALUK.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR:SRI PUZHAKKARA MOHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C No. 4042 OF 2006

Dated this the 20th day of December 2006

ORDER

The petitioner faces allegations interalia under Section 376 of the I.P.C and Section 3 (1) (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. He is alleged to have had sexual intercourse with a woman belonging to the scheduled Case on the promise that he will marry her. He allegedly wanted her to get the pregnancy aborted. The complaint was filed when she was seven months pregnant and when she realised that he may not marry her.

2. The F.I.R was registered. In the course of investigation, the petitioner was arrested on 28-9-2006. He was enlarged on bail as per order dated 7-11-2006 subject to certain conditions. The conditions oblige to him to report before the investigating officer on all Mondays till 13-11-2006 and thereafter on the first working day of every month till the completion of the trial and final disposal . He is also directed not to leave the State of Kerala until the trial and the disposal of the Session case .

3. The learned counsel for the petitioner submits that the allegations are totally unjustified. They are false. They are made with the

ulterior motive of vexing and harassing the petitioner. The petitioners prayer is that he will co-operate with the investigation and trial and he will be available as and when required by the investigator or the trial court. Petitioner has to go out of the State of Kerala in search of employment. If he were to compelled to remain within the State of Kerala he will not be able to pursue his employment and will be driven to penury. In these circumstances subject to appropriate safeguards and stipulations the conditions of reporting before the investigator and of his obligation to remain in the state of Kerala till the trial is over may be lifted and relaxed, it is prayed. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor opposes the application on the plea that the petitioner may not be available for trial.

4. I have considered all the relevant circumstances including the nature of the allegations that have been raised against the petitioner. Iam certainly satisfied that the condition imposed on the petitioner can be suitably modified, at the same time insisting that the petitioner will be available before the investigator or the court for trial.

5. In the result this petition is allowed. Petitioner shall execute a

bond for Rs.1,00,000/- with two solvent sureties each for the likesum in supersession of the bond already executed undertaking to appear before the investigating officer and the learned Magistrarte as and when directed by them. He shall also specify the name of the surety to whom such notice for appearance must be given during his absence within the state of Kerala and in such event the petitioner shall report before the investigating officer/ trial court within a period of one month from the date of service of notice on such specified surety.

6. Petition is allowed to the above extent.The said conditions are modified.

R.BASANT, JUDGE

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